ORIGINAL

NO. 87-576

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

HAROLD Y. SHINTAKU, AND ARNOLD B. GOLDEN,
Petitioners

v.

DONALD D. COWAN,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

Donald D. Cowan
1655 Kanunu Street, #707A
Honolulu, Hawaii 96813
Respondent Pro Se

QUESTIONS PRESENTED

1. Whether Respondent's complaint was merely based upon the federal tort of 42 U.S.C. § 1983, or was based upon additional common torts, breach of required, ministerial duties, and the resulting damages, which torts were at the state level.

2. Whether a state legislative body, state law, a state constitution, and state appellate court may expand upon those rights provided a citizen by the federal constitution and federal law.

3. Whether Petitioners expressly and voluntarily waived their right to raise further defense via *Forrester v. White* in the Hawaii Supreme Court by its filing of "Petitioners' Letter Notifying Intention to Stand on the Application for Certiorari, filed in the Supreme Court of the State of Hawaii on December 1, 1986" (*see*, Petitioners' Appendix to the Petition for Certiorari filed herein, page 106a.)

4. Whether the request by a judge to have a charge pressed against Respondent for a matter not before his court, while violating ministerial duties mandated by Hawaii State law, constitutes "judicial action" for which the judge is immune or do these actions constitute "nonjudicial" actions, more in the line of what a prosecutor or private citizen does, violating the doctrine of separation of powers:

5. Whether the actions of a State psychiatrist, who was sworn to uphold the constitution and laws of the State of Hawaii, who was a psychiatrist at the prison where the defendant was being held for a six-months term of imprisonment for alleged civil contempt of court, whose office was next door to the defendant's cell module, who was asked repeatedly by the unrepresented defendant for a copy of any psychiatric report done by that psychiatrist so that the defendant could know its contents and take actions of contacting witnesses and otherwise defending himself from the report, which psychiatrist was present at "informal conferences among interested parties" at which defendant was denied personal hearing or hearing by counsel or anyone else representing him, who participated in a conspiracy to charge the unrepresented defendant for a 10-month old incident as a means to subject the defendant to a pre-arranged insanity defense with the announced goal of institutionalization of the defendant in a psychiatric hospital, who was aware of the utter inability of an imprisoned, unrepresented defendant to take actions to defend himself in the proceedings, were "quasi-judicial" actions of a nature for which he was immune, or whether his actions crossed over the line into non-quasi-judicial actions, by his violating his knowledge and duty of upholding the rights of a defendant under Hawaii State Constitution and the laws of the State of Hawaii, whereby he lost his immunity.

6. Whether the final decision in this case, which case has been pending since June 1982, should have been held up pending the outcome of even yet another case, which outcome might, but might not, be in Petitioners' favor--or was the Hawaii Supreme Court justified in finally putting a limit on waiting for disposition of future cases.

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Respondent Donald D. Cowan, *pro se*, respectfully prays that this Court deny certiorari of this case to review the opinion and order of the Supreme Court of the State of Hawaii, granting Respondent two counts of action in a civil suit against Petitioners herein, by judgment entered on June 23, 1987.

STATEMENT OF THE CASE

The issues involve actions in two cases that overlapped in time. The first was imprisonment for a fixed term of six months for the offense of civil contempt of court. Respondent was denied counsel by petitioner Shintaku on the ground the case was a civil case. The second case of the overlapping pair was an assault-third case pressed against the imprisoned Respondent, at the request of petitioner Shintaku, after he had been imprisoned for one and a half months of the six-month term, for an incident

that had occurred ten months prior to the filing of the assault-third charge against him. So, there is an overlapping of cases here in time. Respondent began his six-months' term for civil contempt on December 11, 1979. On January 21, 1979, a charge was pressed against Respondent while he was jailed. See the following written admission, a letter to Respondent's mother:

January 14, 1980

Dear Mrs. Beeten:

Enclosed is a copy of the report submitted to me by Dr. Arnold B. Golden, psychiatric Consultant for the state. I believe the letter is self-explanatory. As to the recommendation contained at the end of page 3 and continued on page 4, *this Court has requested the attorney for Mrs. Spoone to contact the prosecutor's office to see if they could proceed with the criminal action against your son*. Since the matter before me was a civil matter, I am not empowered to empanel a sanity commission under our laws. *such a commission would be empaneled in a case of a criminal action.*

I will keep you informed as to further progress in this matter. At this point *I do not think that your coming to Hawaii would be of any help to your son*; however, the decision would be yours.

Sincerely,

Harold Y. Shintaku
Judge, Seventh Division

In response to petitioner Shintaku's request, the following charge was pressed against Respondent on January 21, 1980, one week after the above letter:

District Court of the First Circuit, Honolulu Division, State of Hawaii, Complaint: Jeanette

> Spoon [sic.] says that Donald D. Cowan, aka Doug Cowan, on the 28th day of March 1979, in Honolulu, City and County of Honolulu, State of Hawaii, did intentionally, knowingly or recklessly cause bodily injury to the person of Jeanette Spoone thereby committing the offense of Assault in the 3rd Degree in violation of Section 712 of the Hawaii Revised Statutes---Hawaii Penal Code. Subscribed and Sworn to before me this 21st day of January, 1980, Sandy Alexander, City and County.

Note the date of the incident, March 28, 1979, and the date of the above complaint was filed, January 21, 1980--a timespan of about ten months. Note also that it was filed one week after petitioner Shintaku's request to press this charge against Respondent. For more information about this assault-third incident, Respondent jumps ahead in time to the assault-third trial of July 10, 1980.

In that trial, Ms. Spoone and her two witnesses lied in an attempt to get Respondent wrongfully convicted. A detailed memorandum for dismissal, constructed *pro se* by Respondent, was filed by him on December 23, 1981, and it proves that Ms. Spoone and the others were lying by juxtaposing their testimony so that inconsistent statements were shown by comparing the statements made by the three hostile, lying witnesses. See also Appendix A attached hereto, page 1.

But despite Ms. Spoone's lying, the following (and many more) admissions were made by the three hostile witnesses under oath, which though the witnesses are lying, were clear enough admissions which should have made it clear to all concerned, having had access to these witnesses before pressing the charge, that Respondent was not guilty of assault-third:

FUKUHARA: At the point that you and your husband left the house to approach the Defendant, he was just sitting on his moped? (page 34, lines 4-6)

SPOONE: Right, the moped was on the street, and he was sitting on it. (page 34, lines 7-8)

FUKUHARA: Jeanette, had you called the police before you and your husband went out to the street? (35, 17-18)

SPOONE: No. (35, line 19)

FUKUHARA: So, he wasn't doing anything violent or threatening at that time? (page 34, lines 9-10)

SPOONE: Right. (34, line 11)

FUKUHARA: Was he doing anything violent? (42, line 3)

ELLISON: He was doing nothing violent. (42, line 4)

FUKUHARA: Was he yelling and making a lot of noise? (42, line 5)

ELLISON: Not in that particular instance. (42, line 6) [Clever response--it implies, falsely, that Respondent at some other time yelled and made noise.]

FUKUHARA: Isn't it a fact, all he was doing was sitting on his bicycle across the street? (42, lines 7-8)

ELLISON: That's correct. (42, line 9)

SPOONE: Then as we went out the door, I picked up a large stone. It was a kind of a large rock in my yard. (28, lines 13-14)

SPOONE: ...and so I picked up the rock before I even got to the street, and I flung it. (28, lines 20-22)

FUKUHARA: Mr. Ellison, you saw your wife pick up a rock and throw it at the Defendant? (43, lines 16-17)

ELLISON: Yes, I did. (43, lines 18)

FUKUHARA: So, she picked up a rock and tried to heave it at the Defendant? (44, lines 1-2)

ELLISON: That's correct. (44, line 3)

YOUNG: Mr. Ellison, let's go back to the rock. You know how far the rock was thrown? (45, lines 24-25)

ELLISON: The rock was thrown a maximum of three feet. (45, lines 1-2) [A rock thrown three feet! One arm's length? Maximum? Can anyone believe Ellison's concerned with telling the truth?]

ELLISON: ...Jeanette told me outside, he doesn't want to leave. I went across the street. He began to run down the street. I probably chased him down the street at this point... (38, lines 3-5)

FUKUHARA: You stated your husband was angry at Donald, he was chasing him around the street? (34, lines 12-13)

SPOONE: Right. (34, line 14)

SPOONE: ...Doug got off his motorscooter and started to run. (29, line 9)

SPOONE: ...so my husband gave chase to him. Mr. Cowan is a very fast runner...my husband never caught up him, ... (29, 21-23)

SPOONE: At one point Mr. Cowan did slip on the street. There's gravel, and he slipped and skinned his elbow, and then I said to my husband because what we used to do is call the police lots of times, but he would leave before they came. I told my husband I'll push the motorscooter into our garage... (30, lines 4-8) [In fact, Ms. Spoone yelled out to Ellison, 'Let's push it into the ditch,' meaning a deep, concrete-bottomed drainage ditch.]

FUKUHARA: Isn't it true that an ambulance was called on the scene? (40, lines 20-21)

ELLISON: That's correct. (40, line 22)

SPOONE: Now, who summoned the ambulance? (41, line 9)

ELLISON: I have no idea...(41, line 10)

ELLISON: ...The ambulance attendants had--- Defendant Cowan went inside. (41, lines 2-3)

FUKUHARA: You know why he was there? (41, line 6)

ELLISON: He had fallen down during the chase at least twice, and had a bloody elbow. (41, lines 7-8)

SPOONE: ...I told my husband, let's push the motorscooter into the garage so that the police could catch him. (36, lines 1-3)

FUKUHARA: Did you tell Donald that you had called the police? (35, line 22)

SPOONE: No. (35, line 23)

FUKUHARA: But the police had not been called? (36, line 4)

SPOONE: That's true. (36, line 5)

SPOONE: I went to push the motorscooter. It wouldn't move... (30, lines 14-15)

FUKUHARA: Now, at the point where Jeanette was struck, you were at her side? (44, lines 4-5)

COURT: Take your time and make sure. (44, line 9)

ELLISON: I was standing in close proximity within a foot and a half. (44, lines 10-11)

SPOONE: ...It wouldn't move...and by this time the guys were running back towards the motorscooter, Doug ahead of my husband...then Doug came running up and hit me...(30, lines 14-19)

Spoone wanted to give the Court the picture that she, a woman acting by herself, was struggling to push Respondent's

motorscooter, and that Respondent, after running away from Ellison, had doubled back--specifically "Doug ahead of my husband"--and ran up to hit her. But Ellison, who was kept out of the courtroom during Spoone's testimony, shows Spoone was obviously lying by testifying that at the point she was struck he was standing within "one-and a half feet" of Spoone and Respondent's motorscooter. Ellison was closer than that: He had ahold of the motorscooter's handlebars and was pushing the vehicle down the street in response to Spoone's solicitation to push the motorscooter.

> FUKUHARA: Were you handling the motorscooter in any way? (44, line 12)
> ELLISON: No, I was not. (44, line 13)
> FUKUHARA: You were trying to help her push the motorbike? (44, line 14)
> ELLISON: No, I was not. (44, line 15)
> FUKUHARA: ...Didn't either you or Jeannie move that bike at least several feet? (44, lines 16-17)
> ELLISON: I think Jeannie moved it about a foot and a half but gave up because it was too heavy for her. (44, lines 18-19) [Now he hedges: Worried that someone testifying before him might have admitted the moving of the motorscooter, he admits a foot and a half, and the discrepancy is just in degree, a "minor" one-and-a-half feet which he thinks anyone might overlook in the giving of a truthful answer.]
> ELLISON: ...I have been trying to remember how in the world he got by me to hit her. I'm really fuzzy on that. (44, lines 6-8)
> ELLISON: ...At this point, she tried to push the motorscooter, and she was unable to. Jeannie couldn't push it, and she released her hand from it. I turned to, I think at this point my memory is a little fuzzy about that particular time frame, and then I turned back around...(39, lines 3-7)

Ellison's testimony here is fantastic--talk about your selective "fuzziness"! He recalls *precisely* "I turned to"--oops, he better not say something here--now that he has bypassed what

he doesn't want to reveal, his memory returns and he precisely remembers "and then I turned back around." He remembers precisely that she released her hand from it. What Respondent knows Ellison was hiding by his "fuzzy memory" was that he had ahold of the handlebars of Repondent's Vespa motorscooter and was running down the street with it towards a ditch. As the leader of the pack running down the road, looking forward, he didn't see Spoone pushing behind him from the rear and Respondent on the other side slightly behind. He "turned around" because Ms. Spoone was right behind him pushing the Vespa by the rear seat. Respondent was on the other side of the motorscooter running alongside them asking both to stop.

> FUKUHARA: At the point that you were struck, how far away was your husband? (33, lines 10-11)
> SPOONE: I'm kind of vague on that because they were coming back at me,...(33, lines 12-13)
> ELLISON: I was standing in close proximity within a foot and a half. (44, lines 10-11)
> YOUNG: What happened after Jeannie was hit? What did you do? (48, lines 11-12)
> BELCHER: I sat in the van for a couple of minutes just completely amazed at what I saw. And then I saw Jeannie walking around toward the front of my van, and she was holding the side of her face with her head down appearing to be distressed. At that point, I got out of my van, and I went to see if I could aid her...and Doug at this time was avoiding Mr. Ellison. (48, lines 13-20) [Note that Belcher here says nothing about Spoone being knocked down, which should have alarmed him if that had been true.]
> YOUNG: And then when he hit you, what happened next? (31, line 1)
> SPOONE: ...I just went down. (31, line 2) [Spoone is lying, as Belcher's and Ellison's testimony shows.]
> FUKUHARA: What were you carrying in your hand? (51, lines 2-3)
> BELCHER: I had a------walking cane.
> FUKUHARA: And did you use it on Donald Cowan at any time? (51, line 5)

BELCHER: I tried to. (51, line 6)
FUKUHARA: Did you actually hit him? (51, line 7)
BELCHER: I sure made an attempt at him. I threw it at him and the stick broke. I had picked up one of the broken halves and what happened was he was running away from me----(51, lines 8-10)
FUKUHARA: The question was whether you hit him. Did the stick break on Donald Cowan? (51, lines 11-12)
BELCHER: It didn't break on him. It broke on the street. I threw it at him. It broke on the street. I picked up a broken end of it. I did intend to hit him with it. (51, lines 13-15)
FUKUHARA: You stated a neighbor was chasing the Defendant? (45, lines 13-14)
ELLISON: That's correct, and me.
FUKUHARA: You saw a neighbor chasing him with a golf club? You saw him chasing him with any weapon in his hand like a club? (45, lines 16-18)
ELLISON: No, there was a long stick, approximately three feet long. (45, lines 19-20)
FUKUHARA: Now, who summoned the ambulance? (41, line 9)
ELLISON: I have no idea...(41, line 10)
ELLISON: ...The ambulance attendants had--- Defendant Cowan went inside. (41, lines 2-3)
FUKUHARA: You know why he was there? (41, line 6)
ELLISON: He had fallen down during the chase at least twice, and had a bloody elbow. (41, lines 7-8)

Obviously, Jeanette Spoone was lying. If she was lying in this testimony, the obvious purpose was to harm Respondent by a wrongful conviction, punishment for which could have been one year in jail. If this Court suspects that Ms. Spoone was lying, above, in order to harm Respondent, could it not also believe Respondent when he tells this Court that Ms. Spoone was lying throughout this affair? Is it far-fetched for Respondent to state that this lady was trying to hurt him over a sustained period of time, and that she lied to those in a position to hurt Respondent in order to hurt him?

In this second of the two overlapping cases, the assault-

third charge, the criminal court in that case appointed the public defenders office to represent the defendant for that new case only. At no time in the civil case in petitioner Shintaku's court was counsel appointed to represent the imprisoned Respondent, despite numerous requests.

The public defender who made his appearances in the second case, after the Respondent had been civilly imprisoned for about three months, made a brief visit to Respondent in jail with regard to the assault-third charge that had just been pressed, but refused to assist Respondent in being released from the illegal civil imprisonment.

While Respondent was imprisoned, numerous *ex parte* communications were made between petitioner Shintaku, the public defender appointed in the second case, the prosecuting attorney who pressed the charge at the request of petitioner Shintaku, the private attorneys of Ms. Spoone, a psychiatrist who Shintaku requested examine Respondent in the civil case, and the criminal court judge charged with handling the second, assault-third case--none of which ex parte communications Respondent was allowed to hear, know, see in writing, and contest. Statements made in court by this second judge of the assault-third case on March 25, 1980, at a "fitness hearing" confirm these *ex parte* communications to which the imprisoned Respondent was denied the right to hear and contest. The following statements by the assault-third court were made right at the beginning, before he asked one question of Respondent, before one word was uttered by

Respondent to the assault-third case judge.

> THE COURT: *You [public defender Goya] have spoken to me about this case before*, and I understand that Mr. Cowan has another three months at least to serve on the sentence that was passed on him by Judge Shintaku. *And I have also read Dr. Golden's letter* ***which is on file in <u>this</u> matter*** [How? By whom? Why hadn't Respondent been allowed to see the report?], and it is the Court's very definite feeling that we're going to require a three-man board to examine Mr. Cowan.
>
> Now, this is for your benefit, Mr. Cowan. *And you're already incarcerated under another Judge's order. So we're not holding you in jail. That is, this--when I say, we, this Court is not holding you in jail improperly and against your will.* You're there already.

This is precisely how the illegal civil imprisonment caused by petitioner Shintaku was used for the benefit of forcing the insanity defense upon Respondent. It allowed this Court to proceed against a helplessly imprisoned defendant who could not call witnesses, get outside help, do research, prepare for a hearing with counsel to advise him on how to avoid the insanity plea and how to proceed on the case merits using the defense provided by *Hawaii Rev. Stat.* § 703-306, justification for "Use of force for the protection of property."

> And the Court on its own motion, due to the fact that you won't be making the motion yourself, the Court is empowered on its own motion to order that a study be made.

Already, without one single word or question spoken by Respondent, the judge issues his verdict based not on a required "reasonable hearing," but on the *ex parte* communications of Goya and Petitioners herein to this judge.

> Dr. Golden [civil case psychiatrist] has already examined you, so I'm going to order at this time, under

> Section 704-440, that a three-man board be appointed. One of which--I would urge you, if you feel that you are being unfairly treated in this matter, that you have all your senses on a hundred percent basis, *the way to assist yourself, since you're in jail anyway, is to talk to these people who are experts in the field, and see if they can help you.*
>
> Now, if you aren't a person who is fully within your senses, and in all respects, think you're fit to stand trial, and you do have the ability to control your actions so they conform with the law, *talk to these psychiatrists. Tell them what goes on in your mind and in your personal life, and your problems, and they are the kind of people that are people that can help you. So, trust them,* so you won't waste *their* time because--

Respondent, not yet allowed to say a word to the judge yet, here breaks in and speaks the first words he has ever uttered to this judge. Respondent is in a state of shock from just having finished reading petitioner GOLDEN's report. Respondent felt betrayed by Goya, who without warning was asking for a mental irresponsibility defense against Respondent's will, and felt further betrayed by this judge's revelation that Goya had been speaking privately with the judge when Respondent, imprisoned, couldn't hear, represent himself, counter by calling his own witnesses. Respondent felt ganged up on by this judge after being informed that Judge Salz knew all about the civil imprisonment, and noted this judge's artfully sidestepping how his court wasn't responsible for Respondent's six-months' imprisonment--Shintaku's civil court was responsible. Respondent was in a state of shock from listening to this judge impose the insanity defense on him without first asking one question of Respondent.

MR. COWAN: *Do I have an option to refuse?*
THE COURT: I *don't think* you have the option. Some people can be uncooperative. Look, if you decide that you're not going to talk, *nobody is going to break your arm. But what happens, is that* ***you simply will wind up continuously in custody on this kind of matter***.

Thus, Respondent's allegations that there existed a conspiracy among several persons to impose an insanity defense upon him is pretty obvious. Not only Judge Salz, but another judge, Judge Edwin Honda, were brought into the conspiracy. However, because Respondent appeared before these latter two judges on a proper (although false) charge, was appointed a public defender, though only a token one, Respondent therefore did not sue these two judges. Due process had eventually protected Respondent and he ultimately won the assault case.

Now, after the above introduction, Respondent will highlight the various important events making up the parts of this case.

ASSAULT-THIRD/PROPERTY PROTECTION INCIDENT OF MARCH 28, 1979:

See quotations above. Also see Appendices "A" and "B" for details of the assault-third incident, comprised of sworn statements made under oath.

At the time, Respondent didn't want to fight, didn't want to hurt anyone, and was doing the best he could to not hurt anyone in that situation while at the same time he kept the two from destroying his motorscooter.

A COMPLAINT FOR AN INJUNCTION WAS FILED BY THE WOMAN'S ATTORNEY FRIEND ON APRIL 5, 1979:

A few days later, on April 5, 1979, a civil complaint was filed by the woman asking for a permanent injunction against

Respondent's ever driving again on the street where the incident took place, and against Respondent's communicating with the woman. See Appendix "B", page 21, paragraph 30.

RESPONDENT VOLUNTARILY SIGNS THE INJUNCTION ON MAY 15, 1979:

See Appendix "B", page 22, paragraphs 31 and 32.

FIRST SHOW CAUSE ORDER ISSUED JULY 23, 1979:

On or about July 23, 1979, Ms. Spoone requested that petitioner Shintaku issue an order to show cause directing Respondent to appear on July 27, 1979, to show why he should not be held in contempt of court for violating the injunction by allegedly trying to telphone the woman, and for sending a non-hostile postcard to her.

Respondent was given only three days to prepare for this hearing. See Appendix "B", page 23, paragraphs 34 to 36.

TRIAL FOR CONTEMPT OF COURT ON JULY 27, 1979:

On July 27, 1979, Respondent appeared in Circuit Court as ordered with no counsel to represent him. Respondent was asked by petitioner Shintaku if he had counsel to represent him. Respondent related his efforts to obtain counsel to assist him at this hearing, and of his inability to pay for counsel. Respondent also stated his innocence of the accusations brought by Ms. Spoone. Respondent then told petitioner Shintaku that he was appearing very reluctantly as *pro se* and that he didn't know what he was doing as far as standing up in the courtroom and speaking during courtroom proceedings. Petitioner Shintaku merely replied, "I'll help you along," and immediately commenced

a full-blown trial of Respondent--on the spot--for an unspecified type of contempt of court [which by law was actually an allegation of indirect, criminal contempt of law for which Respondent was entitled to due process under rules of penal procedure]. See Appendix "B", page 23, paragraphs 37 to 43.

RESPONDENT WAS CONVICTED OF AN UNSPECIFIED TYPE OF CONTEMPT OF COURT ON JULY 27, 1979:

See Appendix "B", page 25, paragraph 48. Shintaku stated that based on a "preponderance of the evidence"--a civil standard--he found Respondent to be in contempt of court. Petitioner Shintaku then immediately sentenced Respondent to a term of imprisonment for a period of six (6) months together with a fine of FIVE HUNDRED AND NO/100 DOLLARS ($500.00). He suspended imposition of the sentence for a term of thirteen months.

Respondent was not informed of his right to appeal the conviction, would not have known how to appeal if he had been told, and was not appointed counsel to assist him in his appeal.

SHOW CAUSE ORDER ISSUED AUGUST 13, 1979:

Ms. Spoone requested that petitioner Shintaku issue a second OSC to Respondent on August 13, 1979.

HEARING ON SECOND SHOW CAUSE ORDER HELD AUGUST 30, 1979:

Respondent appeared without counsel to represent him, and he could not afford to pay for counsel. No inquiry was made by petitioner Shintaku as to Respondent's appearance without counsel at the hearing.

Ms. Spoone complained that on one day while driving her

automobile in one direction on a highway, she had passed Respondent riding a bicycle traveling in the opposite direction, and that one-half hour later while at a shopping center she had observed Petitioner riding his bicycle in the same shopping center. Her conclusion was that Respondent had been following her, even though Respondent did not speak to her, did not wave to her, did not give any indication that he knew she was in the same shopping center.

Ms. Spoone also complained that she had seen Respondent on another street near the area of her new condominium address, and implied that Respondent's presence on the same street as her new address violated the injunction against Respondent's being on the street of her old address mentioned in the injunction.

Respondent testified that he had no idea Ms. Spoone had been in the shopping center, and that on the other date complained of he had fallen while riding his bicycle on a scenic tour across fields and cut the calf of his leg on a portion of the bicycle, and that he was merely riding to the nearest fire station and ambulance center to get emergency medical aid for a rather deep cut, and this ambulance station happened to be on the street of Ms. Spoone's new address.

Petitioner Shintaku took the matter "under advisement" and adjourned the proceeding.

DEPUTY PROSECUTING ATTORNEY TELEPHONES RESPONDENT'S LUTHERAN CHURCH IN NOVEMBER 1979 AND INQUIRES ABOUT RESPONDENT:

See Appendix "B", page 26, paragraph 52.

RESPONDENT REQUESTS SERVICES OF A MEDIATOR IN NOVEMBER 1979, AND

DEPUTY PROSECUTOR SANDRA ALEXANDER OFFERS THE SERVICES OF THE PROSECUTING ATTORNEYS OFFICE OF THE CITY AND COUNTY OF HONOLULU:

See Appendix "B", page 26, paragraph 53 and 54.

IN MID-NOVEMBER 1987, RESPONDENT, ANXIOUS TO GET A MEDIATION STARTED, TELEPHONES PROSECUTOR ALEXANDER FOR THE DATE FOR THE MEDIATION TO BEGIN:

See Appendix "B", page 27, paragraph 56.

MOTION TO IMPOSE SANCTIONS ON RESPONDENT FILED NOVEMBER 26, 1979:

Ms. Spoone moved for an order imposing sanctions on Respondent for contempt of court. No specific allegations were made of Respondent violating the injunction. Ms. Spoone asked that Respondent "serve at least some jail time, perhaps weekends."

Nowhere in Ms. Spoone's motion was it mentioned that Deputy Prosecutor Sandra Alexander was going to appear at this hearing and testify against him. Nowhere was it mentioned that Ms. Alexander was going to be the main witness of this hearing.

See Appendix "B", page 27, paragraphs 57 and 58.

HEARING ON MOTION TO IMPOSE SANCTIONS ON RESPONDENT ON DECEMBER 11, 1979:

Respondent appeared without counsel to represent him, and he was unable to afford to pay for counsel.

Petitioner Shintaku first denied both of Respondent's motions, one to continue the proceeding, and the other asking Ms. Spoone to be more specific in her allegations so that Respondent could defend.

Petitioner Shintaku then commenced taking evidence. One, and only one, witness was asked to testify against Respondent:

Deputy Prosecutor Sandra Alexander. Respondent had been given no notice whatsoever of the substance of her testimony.

See Appendix "B", page 27, paragraphs 58 and 59.

PETITIONER SHINTAKU SENDS RESPONDENT TO JAIL ON DECEMBER 11, 1979:

After Respondent testified, petitioner Shintaku then stated that he was going to sentence Respondent to begin serving weekends in jail to find out what jail was like. Respondent specifically heard *plural* weekends, not a single week-end.

Respondent immediately became despondent and extremely frustrated. He asked petitioner Shintaku to please impose the full ("maximum") sentence imposed on him earlier.

It is incredible that Judge Shintaku on the one hand believed that Respondent needed to be given a psychiatric examination, but on the other hand refused to appoint counsel to represent Respondent in the proceedings. The legal justification for such an examination is that the defendant may not be able to understand the proceedings against him and assist in his own defense. If this were the true condition of Respondent, how could petitioner Shintaku possibly allow the proceedings to go forth while Respondent was not represented by counsel, forcing such a suspected incompetent to cross-examine witnesses, raise objections, lay a proper foundation, cite statutory, constitutional and case law?

See Appendix "B", page 29, paragraphs 60 to 68.

JUDGE SHINTAKU VISITS RESPONDENT IN JAIL ON DECEMBER 24, 1979:

On December 21, 1979, ten days after Respondent had been

incarcerated, petitioner Shintaku visited the jail where Respondent was imprisoned. No counsel was present at this meeting to represent Respondent, and Respondent could not afford to pay for counsel.

Petitioner Shintaku began the proceeding by asking if Respondent liked prison. Petitioner Shintaku then offered to release Respondent. Respondent told petitioner Shintaku that he did not see how anything would be changed, because Ms. Spoone could come right back with another trivial or absurd accusation, and Respondent would again be imprisoned. So, for these given reasons, Respondent turned down petitioner Shintaku's offer for release from imprisonment.

Respondent again wishes to clarify that his decision was made because Respondent did not know how to legally defend himself from Ms. Spoone.

See Appendix "B", page 30, paragraphs 70.

APPELLANT IS INTERVIEWED IN JAIL BY PETITIONER ARNOLD B. GOLDEN ON JANUARY 4, 1979:

Petitioner Golden appeared at the jail where Respondent was imprisoned, and Respondent was taken under guard to a room for an interview. When petitioner Golden announced his intention to interview Respondent, Respondent informed him that he was not represented by an attorney, and that he did not want to make any statements without being advised by an attorney. Respondent also stated that he did not believe he was mentally ill, and that he did not wanted to be examined. Petitioner Golden responded by saying, "That's going to make things difficult." He then

proceeded to ask general questions of Respondent that did not touch upon the case, and Respondent courteously answered. However, whenever Mr. Golden asked questions about the case, Respondent informed him that he did not want to answer any such questions without first having the assistance of counsel to advise him.

Petitioner Golden then made rather sweeping conclusions about Respondent in reaction to Respondent's refusal to answer questions about his case. Excerpts from his four-page report, dated January 8, 1980, are found in Appendix I, page 51.

Respondent was denied a copy of petitioner Golden's report to read until almost three months after it was distributed to Ms. Spoone's civil attorney, petitioner Shintaku and others. The imprisoned Respondent was never given an opportunity to contest the report in court.

Petitioner Golden was a Hawaii State Prison psychiatrist, and as such was often seen visiting the various jails and prison facilities. On several occasions Respondent asked him for a copy of the report and was "put off." Petitioner Golden did not give Respondent a hint of the contents of his alarming report, and Respondent was left with the impression that his report had been favorable. See Appendices A and B herein.

BEGIN JUDGE SHINTAKU'S ROLE AS PROSECUTOR AND PRIVATE CITIZEN

ON JANUARY 14, 1980, JUDGE SHINTAKU WRITES A LETTER TO THE MOTHER OF RESPONDENT (IN CALIFORNIA) ON JANUARY 14, 1980, ADMITTING THAT HE HAD REQUESTED THAT THE ATTORNEY OF MS. SPOONE INITIATE A CRIMINAL CHARGE (ASSAULT THIRD) AGAINST RESPONDENT (FOR THE MARCH 28, 1979 INCIDENT REPORTED HEREIN ABOVE) AND DECLARING THAT A SANITY COMMISSION "WOULD BE EMPANELED" IN RESPONDENT'S

ASSAULT-THIRD CASE)

On January 14, 1980, petitioner Shintaku wrote the letter to the mother of the unrepresented Respondent in the civil case, set forth above. See also Appendix J, page 53.

ON JANUARY 11, 1980, RESPONDENT IS INFORMED BY ANOTHER PRISONER, KNOWLEDGEABLE IN LAW, THAT RESPONDENT DEFINITELY HAD THE RIGHT TO AN ATTORNEY TO REPRESENT HIM IN THE CONTEMPT CASE, AND THAT THE PROCEEDINGS AGAINST RESPONDENT HAD BEEN VERY WRONG.

On or about January 20, 1980, Respondent was engaged in a conversation with a prisoner knowledgeable in law. He told Respondent about *Hawaii Rev. Stat.* § 802-1. Respondent immediately asked guards for permission to look at the law books and found an old copy of the Hawaii Penal Code. In it, Respondent found § 802-1, *Hawaii Rev. Stat.*, which provides:

> Any indigent person who is (1) arrested for, charged with or convicted of an offense or offenses punishable by confinement in jail or prison ...; or (2) *threatened* by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility; ... shall be entitled to be represented by a public defender. ... the court may appoint other counsel. [Emphasis added.]

Respondent also came across out-of-date statutes that showed there was a difference between "civil" contempt and "criminal" contempt and distinguished the permissible manner of trial and punishment of each and statutes regarding the writ of habeas corpus. See Appendix B, page 31, paragraph 74.

BY LETTER POST-MARKED JANUARY 21, 1979, RESPONDENT WROTE A LETTER TO JUDGE SHINTAKU GIVING HIM HIS NEWLY ACQUIRED INFORMATION ABOUT THE DIFFERENCE BETWEEN CIVIL AND CRIMINAL CONTEMPT, ABOUT THE RIGHT OF A DEFENDANT TO HAVE COUNSEL TO DEFEND IN ANY OFFENSE WHERE HE COULD BE INCARCERATED, AND ASKING FOR RELEASE FROM JAIL AND A NEW TRIAL

Respondent wrote a letter to petitioner Shintaku postmarked January 21, 1979 (but written earlier than that--jail guards collected outgoing mail but did not promptly mail them). Respondent asked for appointment of counsel, release and a new trial. Thus, Respondent finally began to have some understanding of how to legally defend himself in court using statutes, rather than relying on attempts to show sincerity. See Appdx. K, p.54.

RESPONDENT IS BEATEN IN PRISON IN AN EXTORTION ATTEMPT, AND HE IS TRANSFERRED TO THE HAWAII HIGH SECURITY PRISON

Shortly after giving the above letter to guards to mail, Respondent was approached by several prisoners who demanded that Respondent give him any money he had. This attack was simply a group of tough prisoners who routinely extorted any new prisoners.

RESPONDENT IS TRANSFERRED TO THE PSYCHIATRIC WARD OF THE HIGH SECURITY FACILITY:

Respondent was eventually placed in the psychiatric ward by guards, not for sanity reasons, but because it was the safest place for Respondent under the circumstances of the serious threats made to him for having "ratted" about the assault of him.

OVERLAPPING OF CONTEMPT AND ASSAULT CASE BEGINS

ON OR ABOUT JANUARY 25, 1980, RESPONDENT WAS CHARGED BY PROSECUTOR SANDRA ALEXANDER WITH ASSAULT-THIRD FOR THE INCIDENT OF MARCH 28, 1979, HEREIN WRITTEN ABOVE.

Respondent was served with a charge of assault-third for his use of force in the March 28, 1979 incident written out above, ten months after the incident. See above, page 3 herein.

ON JANUARY 28, 1980, RESPONDENT WAS TAKEN FROM THE HIGH SECURITY FACILITY TO JUDGE SHINTAKU'S CHAMBERS FOR A HEARING ON RESPONDENT'S LETTER REQUEST FROM JAIL ASKING FOR APPOINTMENT OF COUNSEL, RELEASE FROM JAIL AND A NEW TRIAL:

On January 28, 1980, a hearing was held on Respondent's January letter request from jail requesting appointment of counsel. No attorney was present to represent Respondent, and he could not afford to pay for an attorney. Petitioner Shintaku stated that the right to counsel applies to criminal trials and did not apply to Respondent's civil imprisonment. Respondent's request for counsel was denied for that reason only.

Then petitioner Shintaku offered to release Respondent if Respondent would "voluntarily" agree to see a psychiatrist as a condition for a new suspension of sentenced. Deputy Prosecutor Sandra Alexander, present, then advised that if Respondent would "voluntarily" see a psychiatrist in Shintaku's civil case, that no further action would be taken in the assault third charge she had just pressed against Respondent on January 21, 1980. See Appendix B, page 33, paragraphs 81 to 83.

RESPONDENT IS RELEASED ON SUSPENSION OF SENTENCE ON JANUARY 28, 1980:

Respondent gave in and agreed as a condition of suspension, after seven weeks of civil imprisonment, to "voluntarily" see a psychiatrist. Respondent went to his church and got permission to stay there temporarily. Respondent immediately sought and was given employment with Western Temporary Service as a typist.

ON FEBRUARY 1, 1980, RESPONDENT CHANGED HIS MIND ABOUT "VOLUNTARILY" SEEING A PSYCHIATRIST AS A CONDITION OF SUSPENSION AND WENT BACK TO JUDGE SHINTAKU IN HIS OFFICE TO HONORABLY INFORM HIM RESPONDENT WOULD NOT AGREE TO THE CONDITION, AND TO THUS HONESTLY OFFER HIMSELF FOR RE-IMPRISONMENT:

From his January 28th release to February 1, 1980, Petitioner thought about the unjust, obvious strong-arm attempt being made by Deputy Prosecutor Sandra Alexander, petitioner Shintaku and petitioner Golden to force psychiatric treatment on him with the threat of prosecuting him for assault third. Respondent concluded that he could not accept succumbing to such strong-arm coercion. He was innocent of the assault charge.

Respondent made his decision, packed what he would need in prison, and on February 1, 1980, went to see petitioner Shintaku at his office chambers. A hearing was held, and Respondent told petitioner Shintaku that he decided not to see a psychiatrist, that Respondent didn't think he was mentally ill, and that he resented the false charge of assault third pressed against him as a lever. Respondent told petitioner Shintaku that, because it was a condition made for suspension, that Respondent would not agree to see a psychiatrist, and he had immediately, as a matter of honesty, come to the judge and offered himself for re-imprisonment. See Appendix B, page 34, paragraph 84.

ON FEBRUARY 1, 1980, JUDGE SHINTAKU RULES THAT HE WILL NOT SEND RESPONDENT BACK TO JAIL: Appendix B, page 34, par.84.

On February 1, 1980, at the conclusion of the hearing, petitioner Shintaku ruled, on the record, "I will not send you back to jail." Petitioner Shintaku then released Respondent, and Respondent was free without condition for suspension of sentence.

ON FEBRUARY 5, 1980, RESPONDENT WAS ASKED BY THE MINISTER OF HIS CHURCH TO GO WITH HIM TO SEE JUDGE SHINTAKU--NO EXPLANATION WAS OFFERED: Appendix B, page 35, paragraph 85.

Respondent was awakened around 6:00 a.m. on the morning of February 5, 1980, and asked by his church pastor to come with him to see petitioner Shintaku. There was no written or verbal notice given him that a hearing was to take place. When Respondent asked why the "meeting," the pastor wouldn't say.

ON FEBRUARY 5, 1980, WHAT WAS CALLED BY COURT AS "AN INFORMAL CONFERENCE AMONG INTERESTED PARTIES" WAS CONDUCTED BY JUDGE SHINTAKU AMONG ATTORNEYS FOR MS. SPOONE, DEPUTY PROSECUTOR SANDRA ALEXANDER, PETITIONER GOLDEN, AND OTHERS. RESPONDENT, REPRESENTED BY NEITHER COUNSEL NOR FRIEND, WAS LED OUT OF THE COURTROOM AT THE BEGINNING OF THE HEARING, AND NOT ALLOWED BACK INTO THE COURTROOM UNTIL THE CONCLUSION OF THE 25-MINUTE HEARING.

When Respondent arrived, he had no idea a hearing was scheduled--he had been told only "just a meeting with Judge Shintaku." No counsel was present to represent Respondent, and he could not afford to pay for counsel.

Petitioner Shintaku then entered the courtroom, wearing a sports coat, no black robe, and immediately told the bailiff to place Respondent in his chambers and close the door, so that Respondent could not hear what was said or participate in the hearing in the courtroom.

When finished, not a hint of what was said at the hearing was revealed to Respondent. Respondent now has a full transcript of every word spoken at the hearing, and this is what transpired:

A fire had been set in the building, not the office, of a former attorney of Ms. Spoone. Everyone connected to

Respondent's case leaped to the conclusion that Respondent, by having been released from jail a week before on January 28, 1980, logically must have been the one who set it--after all, no one among them could establish his whereabouts at the time of the fire (and for some unknown justification they didn't ask Respondent and give him a chance to inform them), and therefore they presumed without any evidence that Respondent must have been the one who set the fire.

Ms. Spoone's former attorney said that he didn't want to stand guard duty at his house, and therefore requested that petitioner Shintaku re-imprison Respondent immediately. Petitioner Golden stated he believed that Respondent should be incarcerated in a mental hospital. After a few comments such as this, the remainder of the hearing was on the tactics of how best to have Respondent committed to a mental institution. Deputy Prosecutor Sandra Alexander expressed confidence that a sanity commission would be empaneled in the assault third case. Petitioner Shintaku cautioned the Deputy Prosecutor that he couldn't incarcerate Respondent forever, just a short time, four months--and urged her and the others to act quickly.

Petitioner Shintaku admitted during this conference that those present in the hearing room couldn't prove the arson allegation. Nevertheless, he reversed his unconditional release of Respondent of February 1, 1980, and ordered Respondent back to Halawa High Security Facility immediately after this February 5, 1980 ex parte hearing from which Respondent was excluded.

See Appendix E, Page 35, paragraphs 86 to 94.

ON FEBRUARY 19, 1980, RESPONDENT WROTE A LETTER TO JUDGE SHINTAKU ASKING HIM TO INFORM HIM OF HIS OFFENSE, CIVIL OR CRIMINAL CONTEMPT, AND ASKING FOR ASSISTANCE OF COUNSEL FOR APPEAL:

Back in Halawa High Security Facility, questions of law nagged Respondent. Respondent was sure that he could understand what he read in *Hawaii Rev. Stat.* § 802-1. So on February 19, 1980, Respondent wrote Judge Shintaku a letter. See Appendix ___, page ___. Though he received the letter, date-stamped it and filed it in Respondent's case file, Judge Shintaku did not respond to Respondent's letter. Appendix M, page 58.

ON MARCH 18, 1980, RESPONDENT WROTE A LETTER TO THE LAW CLERK OF JUDGE SHINTAKU, ASKING FOR INFORMATION ABOUT WHAT STATUTE HE HAD BEEN CONVICTED, AND HOW TO APPEAL.

After waiting for several weeks for a reply from petitioner Shintaku, Respondent wrote a letter to Shintaku's lawclerk. See Appendix N, Page 59.

Though he received the letter, date-stamped it and filed it in Respondent's case file, the law clerk did not respond to Respondent's letter.

SOMETIME IN THE MIDDLE OF RESPONDENT'S SIX MONTHS' CIVIL IMPRISONMENT, A PUBLIC DEFENDER APPOINTED IN RESPONDENT'S ASSAULT-THIRD CASE SHOWED UP AT PRISON TO INTERVIEW RESPONDENT. ALTHOUGH REQUESTED TO HELP INVESTIGATE THE CIVIL IMPRISONMENT, THIS PUBLIC DEFENDER REFUSED TO TAKE ANY STEPS TO WIN RESPONDENT'S RELEASE: Appendix B, p.38, par. 97.

In a brief interview regarding the assault-third case, Respondent told Mr. Goya his suspicions that the civil imprisonment illegal, and asked Mr. Goya's help in getting his release. Mr. Goya made no further contact with Respondent about it, and did absolutely nothing in regard to getting Respondent

released from the illegally imposed term of civil imprisonment.

ON MARCH 25, 1980, A HEARING WAS HELD IN THE ASSAULT THIRD CASE ON THE DEFENSE OF MENTAL IRRESPONSIBILITY, WHICH HEARING WAS TOTALLY UNEXPECTED BY RESPONDENT:

Respondent's assault-third trial was scheduled for March 25, 1980, so that when March 25, 1980, came, Respondent was expecting the trial. However, once in the court room, Public Defender Goya then informed Respondent for the first time that no trial was to take place--rather, a hearing on appointment of a three-member psychiatric panel was to take place. Respondent had no opportunity to call witnesses of his own to such a hearing, he had no opportunity to think about what he would like to ask and say at such a hearing. See Appendix B, Page 39, pars. 104-106.

Respondent is here going to cut short giving so much detail. From what he has related up to this point in this brief, this court should be able to understand what was happening, and have some insight into Respondent's overlapping cases, why Respondent said some things, the pressures on Respondent, the lack of legal representation, the ex parte communications between parties who should not, in respect to their Code of Professional Conduct, have been communicating ex parte about Respondent's cases.

JUDGE SHINTAKU WROTE A LETTER TO RESPONDENT ON APRIL 1, 1980, NOT GIVING RESPONDENT ANY OF THE INFORMATION HE HAS ASKED FOR IN HIS LETTERS TO COURT:

In a letter dated April 1, 1980, petitioner Shintaku sent a memo to Respondent telling him not to write anymore letters to petitioner Shintaku from jail. Appendix P, p.74.

ON APRIL 7, 1980, PUBLIC DEFENDER GOYA, NEVER APPOINTED COUNSEL FOR RESPONDENT IN THE CIVIL IMPRISONMENT CASE, NEVERTHELESS PUT HIS SIGNATURE ON LEGAL PAPER WITH THE CAPTION FOR RESPONDENT'S CIVIL CASE AS "ATTORNEY FOR DEFENDANT," AND REQUESTED, UNKNOWN BY RESPONDENT AND AGAINST RESPONDENT'S WISHES, THAT RESPONDENT BE TRANSFERRED BY PETITIONER SHINTAKU TO KANEOHE STATE HOSPITAL FOR TREATMENT AND PSYCHIATRIC EXAMINATION: Apndx.B, p.41, par.108.

Respondent was trying to get rid of public defender Goya, who was obviously acting as the pawn of petitioner Shintaku. Goya knew that Respondent wanted him to no longer act on behalf of Respondent--yet Goya went ahead and put his name on a civil document claiming to be Respondent's civil attorney and moving, ex parte, without knowledge or the presence of Respondent in the courtroom, for transfer of Respondent to a mental hospital.

ON APRIL 7, 1980, DEPUTY PUBLIC DEFENDER GOYA FILED A MOTION REQUEST THAT RESPONDENT RELY ON THE DEFENSE OF MENTAL IRRESPONSIBILITY, STATING THAT HE BELIEVED THAT RESPONDENT LACKED THE CAPACITY TO UNDERSTAND THE PROCEEDINGS AGAINST HIM TO ASSIST IN HIS OWN DEFENSE:

Goya filed on April 8, 1980, a motion for Respondent to rely on the insanity defense. In Goya's Affidavit, he had the incredible gall to state he believed that Respondent was suffering from a mental disease "***which may adversely affect Defendant's capacity to understand the proceedings against him to assist in his own defense.***" This statement made in his affidavit is far from the truth. Appendix 41, p.41, paragraph 108.

SOMETIME IN MID-APRIL, 1980, RESPONDENT WAS TRANSFERRED TO HAWAII STATE HOSPITAL:

Respondent was transferred from the Oahu prison to Hawaii State [Mental] Hospital in mid-April, 1980.

ON APRIL 18, 1980, DR. THEODORE GOLDMAN (NOT TO BE CONFUSED WITH THE SIMILAR NAME OF PETITIONER GOLDEN) ISSUED HIS PSYCHIATRIC REPORT:

A particularly careful, thoughtful psychiatrist by the name of Dr. Goldman--not to be confused for the similar name of petitioner Golden herein--made his report on April 18, 1980. See Appendix Q, Page 75.

ON APRIL 21, 1980, DR. KNIGHT SUBMITTED HER PSYCHIATRIC REPORT:

Dr. Knight submitted her report on April 21, 1980. See Appendix R, Page 76.

ON MAY 1, 1980, DR. KO SUBMITTED HIS PSYCHIATRIC REPORT:

Dr. Ko was not the last person to interview Respondent--he was the first, but was just very late in submitting his report. He encountered Respondent wearing State Mental Hospital white pajamas, required clothing the first week, and he interviewed Respondent when immediately taken out of an all-white padded room in which all new residents were locked whiled being evaluated during the first several days. Naturally, in the midst of this intake ordeal, and not allowed yet to wear normal clothes, Dr. Ko's observations should be filtered through perception of these circumstances. See Appendix S, page 77.

RESPONDENT WAS RETURNED TO HALAWA HIGH SECURITY FACILITY AFTER THE TWO WEEKS AT HAWAII STATE HOSPITAL, THERE TO FINISH THE REMAINDER OF THE TERM OF CIVIL IMPRISONMENT, AND WAS RELEASED ON JUNE 5, 1980:

Respondent was found to be neither insane nor in need of incarceration in a mental hospital. Instead, Respondent was required to serve out the illegal, six months' fixed term of civil imprisonment. He was released on schedule on June 5, 1980.

Soon after his release, Respondent went to the office of

petitioner Shintaku and asked to speak with him. Respondent then asked petitioner Shintaku, "Of what offense did you convict me?" Petitioner Shintaku replied, "I convicted you of ***criminal*** contempt of court." In this simple admission, Shintaku negated two different mittimus' that stated Respondent had been convicted of the offense of "CIVIL CONTEMPT OF COURT"; negated petitioner Shintaku's January 28, 1980 denial of appointment of counsel to assist Respondent on the ground that the charge was a civil charge, not a criminal charge; negated any reasonableness whatsoever of petitioner Shintaku's ignoring Respondent's letter requests for information on how to appeal, a writ of habeas corpus release, a new trial, and appointment of counsel to assist him at the new trial; negated the reasonableness of public defender Goya's refusing to do anything about the illegal imprisonment of Respondent; negated every assertion that Respondent lacked the capacity to understand the nature of the proceedings against him and to assist in his own defense.

Ultimately, Respondent was not convicted for the assault-third incident of March 28, 1979. Respondent studied law and filed the instant lawsuit against Petitioners and others, and upon lengthy review by two Hawaii State appellate courts, both appellate courts granted Respondent two counts of action allowing Respondent to proceed to trial against these Petitioners and others.

DATED: Honolulu, Hawaii, January 13, 1988.

Donald D. Cowan

DONALD D. COWAN, Respondent Pro Se

CLEAN PRINT OF CORRECTED PAGES

OF RESPONDENT'S RESPONSE TO PETITION

that had occurred ten months prior to the filing of the assault-third charge against him. So, there is an overlapping of cases here in time. Respondent began his six-months' term for civil contempt on December 11, 1979. On January 21, 1980, a charge was pressed against Respondent while he was jailed. See the following written admission, a letter to Respondent's mother:

January 14, 1980

Dear Mrs. Beeten:

Enclosed is a copy of the report submitted to me by Dr. Arnold B. Golden, psychiatric Consultant for the state. I believe the letter is self-explanatory. As to the recommendation contained at the end of page 3 and continued on page 4, *this Court has requested the attorney for Mrs. Spoone to contact the prosecutor's office to see if they could proceed with the criminal action against your son*. Since the matter before me was a civil matter, I am not empowered to empanel a sanity commission under our laws. *Such a commission would be empaneled in a case of a criminal action.*

I will keep you informed as to further progress in this matter. At this point *I do not think that your coming to Hawaii would be of any help to your son*; however, the decision would be yours.

Sincerely,

Harold Y. Shintaku
Judge, Seventh Division

In response to petitioner Shintaku's request, the following charge was pressed against Respondent on January 21, 1980, one week after the above letter:

District Court of the First Circuit, Honolulu Division, State of Hawaii, Complaint: Jeanette

Respondent's ever driving again on the street where the incident took place, and against Respondent's communicating with the woman. See Appendix "B", page 21, paragraph 30.

RESPONDENT VOLUNTARILY SIGNS THE INJUNCTION ON MAY 15, 1979:

See Appendix "B", page 22, paragraphs 31 and 32.

FIRST SHOW CAUSE ORDER ISSUED JULY 23, 1979:

On or about July 23, 1979, Ms. Spoone requested that petitioner Shintaku issue an order to show cause directing Respondent to appear on July 27, 1979, to show why he should not be held in contempt of court for violating the injunction by allegedly trying to telephone the woman, and for sending a non-hostile postcard to her.

Respondent was given only three days to prepare for this hearing. See Appendix "B", page 23, paragraphs 34 to 36.

TRIAL FOR CONTEMPT OF COURT ON JULY 27, 1979:

On July 27, 1979, Respondent appeared in Circuit Court as ordered with no counsel to represent him. Respondent was asked by petitioner Shintaku if he had counsel to represent him. Respondent related his efforts to obtain counsel to assist him at this hearing, and of his inability to pay for counsel. Respondent also stated his innocence of the accusations brought by Ms. Spoone. Respondent then told petitioner Shintaku that he was appearing very reluctantly as *pro se* and that he didn't know what he was doing as far as standing up in the courtroom and speaking during courtroom proceedings. Petitioner Shintaku merely replied, "I'll help you along," and immediately commenced

incarcerated, petitioner Shintaku visited the jail where Respondent was imprisoned. No counsel was present at this meeting to represent Respondent, and Respondent could not afford to pay for counsel.

Petitioner Shintaku began the proceeding by asking if Respondent liked prison. Petitioner Shintaku then offered to release Respondent. Respondent told petitioner Shintaku that he did not see how anything would be changed, because Ms. Spoone could come right back with another trivial or absurd accusation, and Respondent would again be imprisoned. So, for these given reasons, Respondent turned down petitioner Shintaku's offer for release from imprisonment.

Respondent again wishes to clarify that his decision was made because Respondent did not know how to legally defend himself from Ms. Spoone.

See Appendix "B", page 30, paragraphs 70.

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Petitioner Golden appeared at the jail where Respondent was imprisoned, and Respondent was taken under guard to a room for an interview. When petitioner Golden announced his intention to interview Respondent, Respondent informed him that he was not represented by an attorney, and that he did not want to make any statements without being advised by an attorney. Respondent also stated that he did not believe he was mentally ill, and that he did not want to be examined. Petitioner Golden responded by saying, "That's going to make things difficult." He then

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